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SUBJECT: IMO: LONDON CONVENTION REPORT ON MARINE
ENVIRONMENT ISSUES

11. SUMMARY: The International Maritime Organization's (IMO) annual meetings for both the 1972 London Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter (the "London Convention") and the 1996 Protocol to the London Convention (the "London Protocol") made progress on several marine environment issues. They achieved a strong (but non-binding) resolution on the controversial issue of ocean fertilization for climate change that will allow scientific research while restricting commercial ventures. The meetings made progress on new guidelines for placement of artificial reefs, a reporting format for sub-seabed carbon sequestration projects, and establishing a technical cooperation trust fund. The meetings also adopted guidance on managing spoilt cargo and removal of anti-fouling coatings, and agreed to forward these to the IMO's Marine Environment Protection Committee (MEPC) for consideration and adoption. Other parties were pleased to hear that the London Protocol is currently before the U.S. Senate, awaiting the Senate's advice and consent to ratification. END SUMMARY

Introduction and Background

12. The annual meetings for both the 1972 London Convention and the 1996 London Protocol were held concurrently October 27-31 at the headquarters of the International Maritime Organization (IMO) in London. The U.S. delegation consisted of representatives of Department of State, the U.S. Environmental Protection Agency, the Army Corps of Engineers, the National Oceanic and Atmospheric Administration, the U.S. Navy, the U.S. Coast Guard and the Department of Energy.

13. The Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 1972 (the London Convention) established a global regime for the protection of the marine environment from pollution caused by ocean dumping and incineration at sea. It now has eighty-five Parties. The United States became a Party in 1975. The 1996 Protocol to the London Convention (the London Protocol) is a free-standing treaty that updates and improves the Convention, and will

eventually supersede it. Unlike the London Convention, which lists substances that may not be dumped in the ocean, the Protocol prohibits ocean dumping of any waste or other matter except for those specifically allowed to be considered for dumping (a "reverse list"). The Protocol was adopted in 1996, and the United States signed it in 1998. The Protocol entered into force March 24, 2006. The Protocol currently has 36 Parties, with many more (including the United States) actively working towards accession.

Scientific Group Report

14. The London Convention has a Scientific Group that meets each spring and works intersessionally on the technical issues of ocean dumping. The London Protocol Scientific Group meets concurrently with the London Convention's Scientific Group, through an agreed arrangement that the offices of Chair and Vice-Chair would consist of members representing Parties to both the Protocol and to the Convention.

15. The Chair of the London Convention and London Protocol Scientific Groups provided an overview of the 31st session of the Scientific Groups (held in May 2008 in Guayaquil, Ecuador). The meeting endorsed the recommendations of the 31st Scientific Group session, including the adoption of the

revised "Generic Waste Assessment Guidelines," the revised titles for the Specific and Generic Guidelines to be displayed on the London Convention website, the "Specific Guidelines for Assessment of Inert, Inorganic Geological material," and the "Guidance for the Placement of Artificial Reefs." Additionally, the meetings adopted the "Draft Guidance on Best Management Practices for Removal of Anti-Fouling Coatings from Ships, including TBT Hull Paints," and the "Draft Guidance on Managing Spoilt Cargoes," with the agreement to forward both to the 59th session of the International Maritime Organization's Marine Environment Protection Committee (MEPC) for consideration and adoption. The Contracting Parties endorsed the Joint Work Programme of the Scientific Groups and agreed to merge the LC/LP Consultative Meetings' Joint Long-term Programme with the Joint Work Programme of the Scientific Groups.

16. The Scientific Groups will hold their next meeting from May 25 - 29, 2009, in Rome, Italy.

Ocean Fertilization

17. Ocean fertilization is a potential greenhouse gas mitigation technique that works, in theory, by adding iron or other substances to high nutrient regions of the ocean in order to stimulate phytoplankton blooms that sequester carbon dioxide. In dealing with this topic, the United States has consistently tried to balance the concerns about the uncertain efficacy and potential adverse side effects of ocean fertilization with the need for further scientific investigations to explore, among other things, the potential of ocean fertilization as a climate change mitigation strategy. The London Convention and Protocol have emerged as the primary international mechanisms dealing with this issue, at least in terms of impacts on the ocean environment. The fall 2007 annual London Convention and Protocol meetings agreed to a statement that "urged States to use the utmost caution when

considering proposals for large-scale ocean fertilization operations" and "took the view that, given the present state of knowledge regarding ocean fertilization, such large-scale operations were currently not justified." The London Convention and Protocol Scientific Groups meeting (Guayaquil, Ecuador, May 19-23, 2008) considered the issue further, and developed a revised set of assessment criteria (initially developed at the June 2007 Scientific Groups meeting) for states to use in evaluating and regulating any potential ocean fertilization proposals. Ocean fertilization was also discussed at meetings of other international organizations and conventions over the past year, including the annual meetings of the Convention on Biological Diversity (CBD), the Intergovernmental Oceanographic Commission (IOC), and negotiations of the UN General Assembly's of its 2008 Resolution on Oceans and the law of the sea. The CBD meeting issued a statement which, while legally non-binding, was widely viewed as a de-facto moratorium on ocean fertilization. Among the criticisms of the CBD decision was the complaint by some oceanographers and other interested scientists that it could effectively restrict scientific research on ocean fertilization.

18. This year again ocean fertilization was the most controversial and time-consuming topic on the London Convention/Protocol annual meeting agenda. A working group on the topic, led by the Chair of the Scientific Groups, Dr. Chris Vivian of the United Kingdom, worked throughout the week to develop an agreement on appropriate action for the London Convention and Protocol parties to take. On October 31, Convention and Protocol parties approved a

strong, non-binding resolution on ocean fertilization that will allow scientific research while restricting other ocean fertilization activities (including commercial ocean fertilization activities). The resolution calls for the Convention and Protocol Scientific Groups to develop a comprehensive assessment framework for parties planning to permit legitimate scientific research. Work on this assessment framework will continue this spring through an intersessional working group (currently proposed for February 9-13 in London). The resolution also notes that the restriction on other ocean fertilization activities should be reviewed periodically as scientific knowledge about ocean fertilization is further established. Some countries, led by Australia and joined by some Europeans, advocated either amending the London Protocol, or pursuing some other legally binding option, in order to strengthen the degree of regulation on ocean fertilization. Parties agreed to continue working on this concept and further consider and develop it.

19. Climos, one of the U.S. firms hoping to pursue ocean fertilization as a commercial climate mitigation technique, attended the meetings as the representative of the International Emissions Trading Association (IETA), an international organization that was recently granted temporary accreditation by the IMO to attend London Convention/Protocol meetings as a "non-governmental organization observer." Although Climos generally kept a low-profile, and only spoke up publicly to read a general statement about their work and goals, their presence created additional controversy on the topic, as some parties questioned the legitimacy of a single company representing a non-profit business association as an observer. After some discussion in a smaller "heads of delegation" meeting, Parties agreed to

invite IETA to continue as a NGO observer on an interim basis for one additional year, with the request that IETA better explain how their attendance helps to further the objectives of the London Convention and Protocol.

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Carbon Sequestration Ongoing Research and Reporting Format

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¶10. At the previous annual meetings, the Scientific Groups were asked to develop an appropriate uniform format for the reporting of data on sub-seabed carbon sequestration activities, and to present this format at the October 2008 annual meeting. During the May Scientific Groups meeting in Guayaquil, a working group led by Norway (and including Australia, Canada, France, Germany, UK, Japan, Korea, USA and Denmark) further developed a draft format, and worked intersessionally to further revise it. The major issue appeared to be one of resolving issues of consistency and differences among national reporting frameworks; that is, whether to use mass or volume for constituents of the carbon dioxide stream. Another issue (though not a stumbling block) was that of consistency across units to be reported and the precise definition of "depth of injection" - whether this refers to the depth of the water column, or whether it also take into account the thickness of the overlying marine sediment. The United States took the position that all units should be consistent (all flows should either be mass or volume and not be mixed) and all volumes should be reported as standard cubic meters as opposed to a collection of mass units; however the consensus was not to adopt this approach. Next was the issue of whether to use ppm or ppv (parts-per-million by mass or volume). This issue was left for the next Scientific Groups meeting to determine. The general appearance of the tables and layout is almost, although not completely, finalized.

¶11. Parties were asked to describe ongoing carbon sequestration research and activities, both marine and terrestrial. Australia described its Otway Basin project, and the European Union described the "CO2SINK" project in Germany and the "In Salah" industrial-scale CO2 storage project in Algeria. The United States outlined ongoing work by the Department of Energy's (DOE) Regional Carbon Sequestration Partnerships (a joint government/industry effort) for determining the most suitable geological sequestration technologies, regulations, and infrastructure needs for carbon capture, storage, and sequestration in different areas of the country. The United States also mentioned the Weyburn-Midale CO2 Monitoring and Storage Project in the oilfields of Alberta, which is co-funded with the Government of Canada.

Transboundary Carbon Sequestration Issues

¶12. After the London Protocol was amended in 2007 to allow sub-seabed carbon sequestration, some parties began to question how to deal with transboundary carbon sequestration issues. At the request of Norway, Germany, and several other Protocol Parties, the meaning of "export" under LP Article 6 in specific relation to sub-seabed geologic sequestration of carbon dioxide streams under Annex 1 was discussed. Germany hosted an

intersessional meeting in March 2008 in Bonn to discuss this topic, which the United States did not attend. Of immediate concern is how the Article 6 prohibition on export of wastes for dumping impacts Parties planning to export CO2 to another country for the purpose of sub-seabed geologic sequestration. Given the unique circumstance of finding sites suitable for carbon sequestration, it may be that the most appropriate and efficient site is not located within or wholly within a country's own jurisdiction. A working group was set up to discuss this issue during the week, with options for addressing it outlined. Some parties felt that an amendment to Article 6 is in order, while others (including the United States) wanted to explore use of an interpretive resolution. There was general support for the policy objective of facilitating such export, and work will continue on this topic intersessionally.

Compliance Group Meeting

¶13. In 2007, the Meeting of Contracting Parties finalized and adopted Compliance Procedures and Mechanisms (CPM) pursuant to Article 11 of the London Protocol. The Compliance Group met for its first session from 27 to 29 October 2008 and elected Ms. Anne Daniel (Canada) as chair and Ms. Zhou Qian (China) as co-chair. Others elected to the group included Mr. Mongezi Ngoro (South Africa); Professor Hisakazu Kato (Japan); Ms. Marinka Bogdanova (Bulgaria); and Captain Federico Crescenzi (Italy); for a total of six members. Consideration was given to the need to increase the nominations for compliance group members, although no specific conclusion was reached in this regard. The United States was active in the group as an observer given our non-party status to the London Protocol. There was a general sense among members that the group should limit itself primarily to procedural decisions at this stage. It was decided that the working language of the compliance group would be English and that the Group would meet next year at the same time as the Meeting of Contracting Parties but would remain in contact for any issues

that arose during the intersessional period. The Group also developed a statement on how to deal with a potential conflict of interest for its members when reviewing cases and how it would invite and prepare reports to be received from Contracting Parties under Articles 9 and 26 of the Protocol. The Group recommended the following future work items: a) handling referred individual cases of non-compliance; b) studying the Final Report of the "Barriers to Compliance" project (LC 29/INF.2) and considering how the work of the Compliance Group could both contribute to and benefit from this project; c) reviewing dumping reports referred to the Compliance Group pursuant to paragraph 6.2 of the CPM, including where concerns have been raised by the LP Scientific Group; d) examining reports received under Articles 9.4.2 and 9.4.3 of the Protocol; and, e) examining how to make the Guidance on National Implementation of the Protocol a more effective tool for prospective Parties (e.g., providing links to a variety of implementing legislation).

Technical Cooperation and "Barriers to Compliance"
Project

¶14. A key accomplishment of this meeting was establishing a technical cooperation (TC) trust

fund, which will be used to fund training programs aimed at increasing and improving compliance with the London Convention and Protocol, especially in developing countries that lack sufficient capacity for adequately regulating ocean dumping. The United States initially had some reservations on establishing such a trust fund, but these were allayed by the Secretariat's full explanation of the planned structure and accountability procedures for the trust fund. The Secretariat assured parties that the TC trust fund will be reported to the IMO Council; IMO will not need to hire additional personnel to manage the fund; auditing costs will be taken from TC trust fund contributions (not from the general IMO budget) and carried out by regular IMO auditors; and the TC trust fund will not detract from normal London Convention/Protocol Secretariat operations. Responding to a query by Australia, the Secretariat assured the meeting that contributing parties will be able to direct their contributions to specific projects they wish to support.

¶15. The meeting also discussed the "Barriers to Compliance" project, which resulted from the previous annual meeting's decision to adopt a strategic approach to help states overcome legislative, institutional, technical and other "barriers" to full compliance with the London Convention and Protocol. At this meeting, parties adopted a Barriers to Compliance "Implementation Plan" as a living document to be revised as needed (the United States already provided some suggested revisions). Italy agreed to continue chairing the working group that will monitor and assist the Secretariat in implementing technical cooperation projects aimed at overcoming barriers to fully complying with the London Convention and Protocol. The Barriers to Compliance project also will pursue the goal of encouraging non- parties to join the London Protocol. Various parties offered to contribute additional funds to the Barriers to Compliance project (which will be put into the TC Trust Fund described above), including Canada, Spain, Korea, the United Kingdom, and the United States. France already has pledged over USD 800,000 for the project, and the barriers project now has funds of over USD 1.2 million. The LC/LP Secretariat is developing plans for workshops in various regions and publications of technical assistance documents.

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Artificial Reefs

¶16. An ongoing discussion within the London Convention concerns the placement of material into the ocean for purposes other than disposal of that material, especially for the creation of artificial reefs. A Correspondence Group has been working intersessionally to develop "Guidance for the Placement of Artificial Reefs" jointly with the United Nations Environment Programme (UNEP). The United States was very actively involved in drafting the Guidance, and a final version was presented to the Governing Bodies for adoption at the 2008 meeting. The final Guidance was adopted by the Contracting Parties, who instructed the Secretariat to publish the Guidelines in the UN working languages as soon as possible in 2009. The issue of the ex-USS ORISKANY (a former aircraft carrier used to create an artificial reef off the coast of Florida), which Greenpeace International raised at the 2006 annual meeting citing concerns over PCBs, was not mentioned at the 2008 meeting.

Spoilt Cargoes and Anti-Fouling Paint

¶17. Certain issues related to marine environmental protection that are, in part, also covered by other international agreements such as MARPOL (another convention in the IMO family that deals with oil spills and pollution from ships), are referred to as "boundary issues." One boundary issue between the London Convention/Protocol and MARPOL is the handling of spoilt cargoes. Canada chaired a joint LC/MEPC correspondence group that prepared a final draft of "advice to mariners" regarding management of spoilt cargoes, which was submitted it to the London Scientific Groups for review in May 2008. The Governing Bodies adopted this "Guidance on Managing Spoilt Cargoes" and agreed to forward it to the next meeting of the IMO's Marine Environmental Protection Committee (MEPC 59) for its consideration and adoption, and recommended distributing it through a joint LC-LP/MEPC Circular to replace Circular Letter No. 2074, issued in 1998 on the same topic. The guidance reflects the U.S. view that the disposal of spoilt cargo at sea is subject to regulation under MARPOL only if it constitutes "garbage" as defined in MARPOL Annex V, Regulation 1. Otherwise, it is subject to regulation as "dumping" under the London Convention/Protocol. Whether the disposal of a particular spoilt cargo is subject to the London Convention/Protocol or MARPOL Annex V must be determined on a case-by-case basis, but in most cases does not fall under Annex V.

¶18. The governing bodies also developed an outreach strategy for the Guidance. In so doing, the governing bodies took into account the fact that MARPOL Annex V (Garbage) is currently being reviewed in an MEPC Correspondence Group, led by Canada, and that the outcome of this review will be discussed at MEPC 59 in July 2009. In terms of planning and timing of the LC/LP outreach effort on spoilt cargo management, and due to the relationship between "garbage" and "spoilt cargoes," it will be important to coordinate the outreach activities on both issues as soon as MEPC has adopted the guidance. It was agreed in this respect that LC/LP experts should join the MEPC Correspondence Group on the review of MARPOL Annex V and exchange views on other boundary issues that were being explored during the review.

¶19. The governing bodies adopted, at this session, the "Guidance on Best Management Practices for Removal of Anti-Fouling Coatings from Ships, Including TBT Hull Paints," agreed to forward the

Guidance to MEPC 59 for its consideration and adoption, and recommended its distribution through a joint LC-LP/MEPC circular.

Radioactive Wastes

¶20. Similar to the previous two annual meetings, the IAEA updated their progress on activities in two major areas - the extension of the system of radiological protection to cover protection of the environment such as explicitly including radiological protection of non-human biota, and updating databases on radioactive waste disposal at sea, and accidents and losses at sea, involving radioactive material. The IAEA reported on work being undertaken by the IAEA, ICRP (the International Commission on Radiological Protection), the European Commission, and

international agencies regarding the development of mechanisms for the radiological protection of humans and the environment. The report noted that in 2007, the ICRP approved the revised fundamental recommendations on the protection of man and the environment.

¶21. The IAEA highlighted that there has been significant progress towards the revision of the BSS (Basic Standards for Protection Against Ionizing Radiation and the Safety of Sources, IAEA SS-115 1996), where explicit international requirements on environmental radiation protection were considered. The revised BSS are being developed together with several cosponsoring or collaborating organizations following the established mechanisms of developing IAEA standards, the participation of relevant advisory standards committees and, consultation with all of its Member States. However, no new developments in, or major revisions of, detailed safety standards applicable to the control of releases of radioactive materials to the environment were foreseen before 2009/2010.

¶22. The second part of the IAEA report dealt with updating of inventories that the IAEA, upon the request of the Contracting Parties, had developed and maintained of radioactive materials entering the marine environment from all sources, including: (a) radioactive waste disposal at sea; and (b) accidents and losses at sea involving radioactive material. Both France and the United States notified the IAEA and the Secretariat, respectively, over the last year of corrections to their specific sections involving historical radioactive waste disposal sites in the Pacific. This information was inadvertently omitted in earlier reports to the IAEA. The French sites, off the coast of Mururoa and Hao Atolls in French Polynesia and used in the 1970s, has been verified by the IAEA for inclusion in the next update of the inventory. The U.S. site, approximately 90 kilometers off the coast of Hawaii and used between 1963 and 1968, has yet to be verified by the IAEA.

¶23. The meeting noted the agreement from the 25th Consultative Meeting that Contracting Parties should use a precautionary approach and ensure that an assessment of potential effects on marine flora and fauna and legitimate uses of the sea would be included in specific assessments using contemporary scientific information.

Korea and Bauxite Dumping

¶24. Korea asked a number of countries to participate in a lunch meeting on October 28 to discuss Korea's ability to accede to the London Protocol in light of their continued dumping of

bauxite in the ocean. The non-Koreans present were Suzanne Schwartz, USA; Peter Burnett, Australia; and Andrew Greaves, UK. Korea explained that under Korean domestic law their bauxite dumping must be terminated no later than 2015. Other participants enquired as to whether the material and process were essentially the same as for bauxite known to be dumped by Japan, a current Party to the Protocol. Korea responded that it was, except that it is in very small volumes compared to the dumping from Japan. The UK, Australian and U.S. officials advised that since Japan had determined that this activity was consistent with the Protocol, and no Parties had questioned it (even though all Parties were aware of it), there was no reason that Korea

shouldn't be able to accede to the Protocol. In fact, Japan has agreed to terminate bauxite dumping by 2015, but does not have it in their law as Korea does. The lunch meeting participants felt that this would provide additional comfort to any Parties who were concerned about whether this dumping was permissible under the Protocol. Korea thanked the group and indicated that this view would be provided to their President, who would then decide whether or not to proceed with accession to the Protocol.

Elections and Meeting Dynamics

¶25. Again this year the issue of ocean fertilization proved to be the most contentious topic on the agenda. Parties spent many late evenings in a break-out working group on the topic, and most of the day on Friday was spent discussing the topic in plenary, at times in strongly worded debates not typically seen at the normally collegial London Convention/Protocol meetings. Mr. Victor Escobar of Spain chaired this combined meeting of the London Protocol and London Convention for the last time. Mr. Escobar has been a particularly effective chair during the last few years -- an important period in which the London Protocol came into force and the controversial issues of sub-seabed carbon sequestration and ocean fertilization emerged as priorities. Many delegations openly expressed regret that he would no longer be fulfilling that role. The meetings elected the former First Vice-Chair, Ms. Chen Yue of China, as the new Chair for both the London Convention and London Protocol, and Mathew Johnson of Australia as the new First Vice-Chair. As no nominees were proposed in time to vote, the position of Second Vice-Chair is still vacant, and the Secretariat will work with the Chair and First-Vice Chair to approach possible candidates during the intersessional period, for election before the next year's annual meetings, which will take place in London October 26 - 30, 2009.

Comment

¶26. Overall, this meeting was a success from the U.S. perspective. In particular, the strong resolution on ocean fertilization satisfied the U.S. goal of allowing continued scientific research while effectively restricting commercial ocean fertilization activities until the science is further established. Like many other multilateral environmental fora these days, the LC/LP meetings seemed to be seized with issues related to climate change - notably ocean fertilization and carbon sequestration. However this has not detracted from other accomplishments - notably the agreement on new guidelines for placement of artificial reefs, assessment tools for inert, inorganic geological material, and revised generic waste assessment guidelines. These were significant achievements that should produce real benefits for the

regulation and control of ocean dumping in the long term. The agreement to establish a technical cooperation trust fund and the strong support for pursuing activities to help developing countries overcome barriers to compliance with the Convention and Protocol were also an indication of the increasing global recognition of the importance of controlling ocean dumping and better managing marine pollution, especially from land-based sources. The United States is still recognized as a

leader within the London Convention/Protocol community. Many of the concrete actions in terms of better management of ocean disposal, especially the development of implementing methodologies and guidelines for testing and disposal of dredged material (the bread and butter of the London Convention and Protocol) have been the product of initiatives led by the United States. However, as more and more countries accede to the London Protocol, we are gradually losing our influence because we remain outside of the Protocol.

TUTTLE